

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DAARON SHEARS,)	
)	
Plaintiff,)	Civil Action No. 18-1596
)	Judge Nora Barry Fischer/
v.)	Magistrate Judge Maureen P. Kelly
)	
PUSHKALAI PILLAI and ALICIA BERGER,)	
)	
Defendants.)	Re: ECF No. 14

ORDER

Daaron Shears (“Plaintiff”) has filed a Motion for Preliminary Injunction (the “PI Motion”) in this prisoner civil rights action. ECF No. 14. This prisoner civil rights action had been referred to United States Magistrate Judge Maureen P. Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72 of the Local Rules for Magistrate Judges.

Magistrate Judge Kelly, in a Report and Recommendation (the “Report”), ECF No. 16, filed on February 22, 2019, recommended that the PI Motion, ECF No. 14, be denied as moot, given that Plaintiff had been transferred out of the prison and the conditions at that prison, concerning which he had sought the preliminary injunction.

Service of the Report was made on the Plaintiff at his address of record. Plaintiff was given until March 11, 2019 to file any objections. The deadline of March 11, 2019 passed and no Objections were filed, and the Court entered an Order adopting the Report on March 12, 2019. ECF No. 17. After the Order adopting the Report was docketed in the morning of March 12, 2019, the Clerk’s Office docketed Plaintiff’s Objections to the Report in the afternoon of March 12, 2019.

We will deem the Objections to have been timely filed based on the prisoner mail box rule given that the Objections were ostensibly signed on March 6, 2019. However, nothing in those Objections merits rejection of the Report and Recommendation.

The operative Complaint in this case named only two defendants, who worked at SCI-Greene against whom he sought, inter alia, injunctive relief. Plaintiff has now been transferred to SCI-Forest and is no longer subject to the control of the two named defendants and an injunction entered against these two named defendants would not afford Plaintiff any relief. Accordingly, the PI Motion is clearly moot.

Plaintiff objects noting that he sought money damages. The Complaint in this case will proceed but only the money damages claim remains viable, we are only denying the PI Motion, we are not dismissing the case.

In his Objections, Plaintiff states: “Department of Correction which preliminary injunction was filed against...” ECF No. 18, ¶ 3. However, he did not name the Department of Corrections as a defendant in the current Complaint. We reject his contention that he sought a preliminary injunction against the Department of Corrections. Moreover, this is so even if he sued the two named individual defendants in their official capacities. Williams v. Wilkinson, 645 F. App’x 692, 696–97 (10th Cir. 2016) (“Also, Mr. Williams's official-capacity § 1983 claims seeking an injunction against former Director Jones, Warden Wilkinson, and Chaplain Wideman are moot because Mr. Jones resigned as the ODOC's director and Mr. Williams is no longer housed at DCF where Warden Wilkinson and Chaplain Wideman are located. *See Jordan v. Sosa*, 654 F.3d 1012, 1027–28 (10th Cir. 2011) (explaining that a prisoner's official-capacity

claim for injunctive relief against a prison official is mooted when the prisoner is transferred to a different facility).”).

As to Plaintiff’s complaints of his current conditions of confinement in his new prison, which he raises in the Objections, Plaintiff must exhaust his administrative remedies with respect to these new claims and only thereafter, can he file a new civil rights action concerning those new claims.

Accordingly, after *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, and Plaintiff’s Objections thereto, the following order is entered:

AND NOW, this 13 day of March 2019;

IT IS HEREBY ORDERED that the Preliminary Injunction Motion, ECF No. 14, is denied as moot.

IT IS FURTHER ORDERED that the Report and Recommendation, ECF No. 16, filed on February 22, 2019, by Magistrate Judge Kelly, is adopted as the opinion of the Court.

BY THE COURT:

s/Nora Barry Fischer
NORA BARRY FISCHER
UNITED STATES DISTRICT JUDGE

cc: The Honorable Maureen P. Kelly
United States Magistrate Judge

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